



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Bucky X-Ray International Corporation

File: B-231353

Date: July 25, 1988

DIGEST

1. The determination to cancel a competitive procurement and to initiate a procurement under section 8(a) of the Small Business Act is a matter for the contracting agency and the Small Business Administration to decide; that decision will not be reviewed by the General Accounting Office absent a showing of possible fraud or bad faith on the part of government officials.
2. Protester contending that the contracting officer acted in bad faith must submit proof that the contracting officer had a specific and malicious intent to injure the protester.

DECISION

Bucky X-Ray International Corporation protests the Defense Logistics Agency's (DLA) decision to set aside a contract under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982), for portable x-ray apparatus. Section 8(a) authorizes the Small Business Administration (SBA) to enter into contracts with government agencies and to arrange for the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns. We deny the protest.

DLA synopsisized request for proposals (RFP) DLA120-87-R-1011 in the Commerce Business Daily (CBD) as a competitive total set-aside for small business firms. Subsequently, at the request of SBA, DLA offered the requirement to SBA under the 8(a) program, and therefore the solicitation was not issued.

Bucky argues that because DLA advertised the requirement, it may not later withdraw it and set it aside under the 8(a) program. The protester cites Federal Acquisition Regulation (FAR) § 5.101 in support of its position. FAR § 5.101,

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however, merely states methods for contracting officers to disseminate information on proposed contracts, such as synopsisizing in the CBD. It lends no support to Bucky's claim that once a proposed procurement is synopsisized, it may not be withdrawn and set aside.

By the terms of the Small Business Act, a contracting officer is given the discretion to let a contract to SBA upon such terms and conditions as agreed to by the agency and SBA. Because of the broad discretion afforded the SBA and the contracting agencies under the applicable statute and regulations, our review of actions under the 8(a) program generally is limited to determining whether the regulations have been followed and whether there has been fraud or bad faith on the part of government officials. RAI, Inc., B-222610, Aug. 5, 1986, 86-2 CPD ¶ 156.

Bucky did not allege bad faith on the part of the contracting officer until its comments on the agency's report on the protest, and offered no reason for the delay. A protester may not introduce a new issue in its comments that it could have raised in its initial submission to our Office. Our Bid Protest Regulations, 4 C.F.R. part 21 (1988), do not contemplate the unwarranted piecemeal presentation of protest issues. Atlas Trading and Supply Company, Inc., B-227164, Aug. 10, 1987, 87-2 CPD ¶ 146. In any event, Bucky's allegation of bad faith on the part of the contracting officer is based on the substance of its protest--that the decision to withdraw the requirement from competitive bidding was made so that an award can be made without competition under the 8(a) program. However, a showing of bad faith requires proof that the contracting officer had a specific and malicious intent to injure the protester, Washington Patrol Services, Inc., B-225610 et al., Apr. 7, 1987, 87-1 CPD ¶ 384, a showing that clearly has not been made here.

In the absence of a showing of bad faith on the part of government officials, we will not object to a determination to cancel a competitive solicitation and to initiate a section 8(a) procurement, since that is a matter for the contracting agency and the SBA to decide. RAI, Inc., B-222610, supra. We have so held where, as in this case, the solicitation has been advertised but not issued, Graphic Industries Association, B-211940, Nov. 21, 1983, 83-2 CPD ¶ 600, and even where an IFB is canceled after bid opening. Exquisito Services, Inc., 65 Comp. Gen. 729 (1986), 86-2 CPD ¶ 78.

Bucky also argues that SBA violated FAR § 6.101, which requires contracting officers to promote and provide full and open competition in soliciting offers and awarding